IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

OP.No. 19219 of 1998(K)

PETITIONER:

MOTOR TRANSPORT WORKERS WELFARE FUND BAORD,
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,
KOLLAM.

BY ADV. SMT.I.SHEELA DEVI
SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
LABOUR DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. P.N. MOHAMMED, JASMINE MANZIL,
MUNDUPARAMBA P.O.,
MALAPPURAM DISTRICT.

BY ADV. SRI.P.G.PARAMESWARA PANICKER
GOVERNMENT PLEADER SRI. T.T. MAHMOOD
SRI.N.MANOJ KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.19219 OF 1998

ORDER ON C.M.P.NO. 40623 OF 1999 IN O.P.NO. 19219 OF 1998 DISMISSED.

19.11.2007 SD/- SIRI JAGAN, JUDGE.

APPENDIX

EXT.P1: COPY OF THE PROVISIONAL ORDER NO.E.M.209/86-87 DTD 7.10.87 ISSUED BY THE DIST.EXECUTIVE OFFICER TO THE 2ND RESPONDENT.

EXT.P2: COPY OF THE PROVISIONAL ORDER NO.EM.209/86-87 DTD 31.10.87 ISSUED BY THE DIST. EXECUTIVE OFFICER TO THE 2ND RESPONDENT.

EXT.P3: COPY OF THE ORDER NO.G.GO.(RT) NO.1475/89/LBR. DTD 2.8.1989 ISSUED BY THE 1ST RESPONDENT.

EXT.P4: COPY OF THE ORDER NO. E.M.209/86-87 (2) DTD 30.3.1991 OF DISTRICT EXECUTIVE OFFICER, MALAPPURAM.

EXT.P5: COPY OF THE ORDER NO.G.O.(RT) NO.3780/97/LBR DTD 26.12.1997 ISSUED BY THE GOVERNMENT OF KERALA.

RESPONDENT'S EXHIBITS

EXT.R1(A): COPY OF THE G.O.(RT) NO.220/90/LBR DTD 29.1.1990.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

O.P. No. 19219 OF 1998

Dated this the 19th day of November, 2007

JUDGMENT

Unusually the Motor Transport Workers Welfare Fund Board has come with this original petition challenging the order of the Government by which final determination order passed by the Board demanding contributions under the Kerala Motor Transport Workers Welfare Fund Act from the 2nd respondent has been set aside by the Government. The order of the Government is Ext.P5. The Government found that the criteria adopted by the petitioner in calculating the wages paid to the workers are not correct. According to the Government, since the workers had worked only for 15 days in every month, the wages computed by the Board should have been divided by two for arriving at monthly wages of the workers.

2. According to the petitioner, this approach is wrong. It is submitted that although the workers worked only for 15 days a month, each day they worked for 14 continuous hours, which is called double duty. Therefore the Board calculated the wages of

the workers taking the fair wages as per the Fair Wages Act for 8 hours each and taking the wages for the total hours of work in a month. Since this is the actual wages payable to the workers for each month, there need not be any division of the same by two is the contention raised.

3. The counsel for the 2nd respondent would dispute this. According to him when the workers worked only for 15 days, the wages computed should be divided by two for arriving at the average monthly wages of the workers.

4. I have considered the rival contentions in detail. Admittedly, the employer had not maintained any registers regarding the wages paid by him to the workers. It is specifically found in Ext.P4 final determination order that he had agreed to the deposition of the workers regarding their wages. Admittedly, each worker worked for 14 hours continuously. As per the Fair Wages Act, fair wages have to be computed for 8 hours work for every day. When admittedly the workers worked for 14 hours continuously 15 days in a month, the fair wages have to be applied for each 8 hours duty and monthly wages calculated accordingly. This alone has been done by the petitioner in this case. I do not find

anything wrong with such computation. That being so, I find that Ext.P5 order of the Government is unsustainable. Accordingly, Ext.P5 is quashed and Et.P4 final determination order is restored. The petitioner would be free to recover contributions as per Ext.P4.

The original petition is allowed as above.

S. SIRI JAGAN, JUDGE

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